

मामला क्रमांक CO-A 550 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>APPELLANT:</u> (In Jail) -Versus- <u>NON-APPELLANT:</u> <u>(Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure)</u> <u>D.B.: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dharendra Mishra, JJ.</u> <u>24-4-2007:-</u> Ku. Minu Banerjee, counsel for the appellant. Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent. Oral judgment dictated on <i>Dais</i>. <u>L.C. Bhadoo, J.</u> 1) This appeal is directed against the judgment of conviction and order of sentence dated 4th May, 2001 passed by the 4th Additional Sessions Judge, Jagdalpur in S.T. No.236/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 6 months.	Madhvee Ganga, aged about 35 years, S/o Kosa Muriya, R/o Village Nayanar, Jogapara, P.S. Katekalyan, Distt. Dantewara. State of Chhattisgarh

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	2) The case of the prosecution, in brief, is that accused Madvi Ganga and Madvi Deva (since deceased) were cousin brothers. There was Tamarind tree in the joint ownership of the accused and the deceased. In the year of the incident, the deceased did not give share of the fruits of Tamarind tree to the accused, therefore, there was dispute among them. In the night of 28-4-2000 at about 11-12 p.m. accused Madvi Ganga went to the house of Madvi Deva carrying axe in his hand. On seeing Ganga coming to his house in the night carrying axe in his hand, Madvi Deva (since deceased) started running. Accused Ganga while chasing him attacked him with axe, as a result of which he fell down in the kitchen garden. The accused fled from the scene of occurrence. Madvi Hadme, wife of the deceased, informed the villagers, on which Panchayat was convened. In the Panchayat, the accused made extra judicial confession regarding commission of murder of Madvi Deva by him. Next day, Somdu, brother of the deceased, went to the police station Katekalyan and reported the matter. Based on that, first information report Ex.-D/2 was registered. Merg intimation Ex.-D/1 was given by Madvi Somdu. 3) After registration of the crime, Investigating Officer left for scene of occurrence, after giving notice Ex.-P/1 to the Panchas, prepared inquest Ex.-P/2 on the body of the deceased. The body of Madvi Deva was sent for postmortem examination to the Primary Health Centre, Katekalyan under Ex.-P/3 where Dr. A.D. Bara conducted postmortem on the body of the deceased. He opined that cause of death was due to massive bleeding and brain damage. Injury was ante mortem in	

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	nature. Death was homicidal in nature. He prepared report Ex.-P/3-A. The site plan Ex.-P/5 was prepared. Axe was seized under Ex.-P/6. 4) After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned 4th Additional Sessions Judge received the case on transfer. 5) The prosecution examined 6 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the crime. 6) Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned. 7) We have heard learned counsel for the parties. 8) Learned counsel for the accused/appellant has not disputed homicidal death of deceased Madvi Deva. Moreover, PW-6 Dr. A.D. Bara has stated that he conducted postmortem on the body of the deceased. He noticed following injuries:- (i) Incised wound over neck (back) in the size of 3" x 2" x 3", (ii) Incised wound over left hip (lateral side) in the size of 3" x 2" x 3",	

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	(iii) Multiple incised + lacerated wounds found over back of the head. Depth of the injuries was up to the brain. Skull bones were fractured. Brain was also damaged. Clotted blood was present. Injury Nos. (i) and (ii) were caused by hard and sharp object. Injuries were ante mortem in nature and were sufficient in the ordinary course of nature to cause death. Cause of death was brain haemorrhage. Death was homicidal in nature. Therefore, in view of the above evidence, it is established that death of the deceased was homicidal in nature. 9) As far as involvement of the accused/appellant in the crime in question is concerned, conviction rests on the following circumstances:- I. That the accused made extra judicial confession before the Panchayat, II. There was motive ^{for} ~~being~~ commission of the crime i.e. there was dispute between the deceased and the accused regarding sharing of the fruits of Tamarind tree. III. That PW-1 Madvi Bhima, brother of the accused and the deceased, PW-2 Madvi Hadme, wife of the deceased, PW-3 Madvi Somdu, real brother of the deceased, and PW-4 Madkami Deva have stated that they saw the accused at the place of occurrence after attacking the deceased with axe,	

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	IV. Weapon of offence i.e. axe was seized at the instance of the accused. <u>First circumstance:</u> 10) After perusal of the evidence of these witnesses, we are convinced that extra judicial confession made by the accused before the Panchayat was not voluntary, as the same is surrounded by suspicious circumstances and same is said to be procured after giving threat to the accused that if he would not disclose then the matter would be reported to the police. PW-1 Madvi Bhima, in examination-in-chief, has stated that before the Panchayat the accused said that he attacked the deceased with axe because he was not giving his share of fruits of Tamarind tree. But in para-7, he has stated that the accused made extra judicial confession on his own without any threat. Again in para-8, he has stated that it is true that Panchas asked the accused to confess otherwise, he would be handed over to the police. Similarly, PW-2 Madvi Hadme, in para-2 of examination-in chief, has stated that on enquiry by the Panchayat the accused said that he attacked the deceased with axe on account of dispute regarding share of fruits of Tamarind tree. But in para-6, she has stated that it is correct to say that Panchayat threatened the accused and asked 'you confess the crime otherwise they will hand over him to the police,' on that the accused made confession. Similarly, PW-3 Madvi Somdu has also stated that on enquiry by the Panchayat, the accused made extra judicial confession, thereafter the matter was reported in the police. PW-4 Madkami Deva has stated that the accused made extra judicial confession before the Panchayat regarding committing murder of	axe was seized at the instance of the accused.

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	Madvi Deva. But in cross-examination, he has stated that Panchayat asked the accused that if he would not say anything, then they would hand over him to the police, on which the accused said that he has committed murder of the deceased. Therefore, in view of the above evidence of these witnesses, it has come on record that Panchayat gave threatening to the accused that if he would not confess, they would hand over him to the police, therefore, under the threat the accused made extra judicial confession. For the above reason, we are of the considered opinion that same is not admissible in evidence. <u>Second circumstance:</u> 11) Almost all the prosecution witnesses have stated that there was Tamarind tree in the joint ownership of the accused and the deceased. In the year of the incident, deceased Madvi Deva refused to give share of the fruits of Tamarind tree of the accused, on account of which there was dispute between the two that is why the accused went in the fateful night in the house of the deceased and attacked him. The above evidence has been given by the prosecution witnesses, therefore, it is established that there was dispute between the deceased and the accused regarding share of the fruits of Tamarind tree, as the deceased refused to give share of the accused, therefore, the accused had motive to commit murder. <u>Third circumstance:</u> 12) PW-1 Madvi Bhima has stated that the accused and the deceased were known to him because they are his brothers. In the fateful night,	

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		in front of his house, he was sleeping. In the mid night, he woke up after hearing cries of wife of Madvi Deva, at that time he saw that the accused was running away after attacking Madvi Deva with axe. He saw him while he was running away. Thereafter, he went near Madvi Deva and saw that he was already dead. His house is adjoining to the house of Madvi Deva. Madvi Deva was lying dead in the kitchen garden. He informed Sukda who in turn informed Hadma. Thereafter, the villagers collected and saw body of the deceased. In para-4, he has stated that at about 12 in the night his neighbour Madvi Deva raised cries 'save save' Ganga is attacking him, therefore, hearing cries of Madvi Deva, he woke up. PW-2 Madvi Hadme, wife of deceased Madvi Deva, has stated that in the fateful night she, her husband and children were sleeping in the Kotha. In the night, the accused came carrying axe in his hand, on seeing the accused, her husband started running towards kitchen garden. The accused chased him carrying axe in his hand and attacked him. He attacked on account of dispute regarding sharing of fruits of tamarind tree. In fact, she did not see actually attacking, but she saw thereafter injuries on the body of her husband. PW-3 Madvi Somdu has stated that houses of Deva, Bhima and his house are adjoining. They have common kitchen garden. Hidme came in the night and informed him that Ganga is chasing Deva with axe in his hand. He did not see the accused attacking the deceased. He reached after the accused attacked the deceased. In view of the above evidence, it is established that these witnesses saw the accused in the house of the deceased carrying axe in his hand.

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	13) Learned counsel for the accused/appellant argued that on account of night it was not possible for these witnesses to identify the accused. Almost everyone has stated that none of them saw the accused actually attacking the deceased. 14) It is true that in the evidence of these witnesses it has come that they had not seen the accused actually attacking, but in their evidence, it has come that the accused was carrying axe and chasing the deceased up to the kitchen garden which was seen by these witnesses. The accused ran away. The presence of the accused is established in the house of the deceased by the evidence of these witnesses. The accused was very well known to these persons because he had share in the tamarind tree with the deceased. There was enmity between the two on account of the fact that the deceased refused to give share of the fruits of tamarind tree to the accused. Therefore, the accused was well known to these persons in advance. He came in the night. When cries were raised, these witnesses saw the accused running away. Immediately after the incident they saw the deceased in injured condition. <u>Fourth circumstance:</u> 15) Axe, weapon of offence, was seized from the accused under Ex.-P/6. PW-4 Madkami Deva has stated that police seized axe from the accused, same was stained with blood. PW-5 H.L. Patel, Sub Inspector, has also stated that he seized axe from the accused under Ex.-P/6. The doctor examined the same and opined that injuries found	

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Barve	on the body of the deceased could be caused by the axe in question. He gave his report Ex.-P/8-A. 16) Cumulative effect of above circumstantial evidence is that there was dispute between the accused and the deceased regarding sharing of the fruits of tamarind tree, the accused was seen by the witnesses at the place of occurrence carrying axe in his hand, the accused had motive on account of refusing to give share by the deceased to the accused, the axe in question was recovered from the accused, therefore, based on the above evidence, it is established that the accused was author of the crime in question. 17) In the circumstances, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court in convicting the accused for commission of offence under Section 302 of the I.P.C. for committing murder of Madvi Deva. 18) In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge

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